

UTILITIES CODE  
TITLE 2. PUBLIC UTILITY REGULATORY ACT  
SUBTITLE B. ELECTRIC UTILITIES  
CHAPTER 41. ELECTRIC COOPERATIVES AND COMPETITION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, and 39.904, this chapter governs the transition to and the establishment of a fully competitive electric power industry for electric cooperatives. Regarding the regulation of electric cooperatives, this chapter shall control over any other provision of this title, except for sections in which the term "electric cooperative" is specifically used.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 16.006, eff. September 1, 2019.

Sec. 41.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of an electric cooperative as described in Section 161.071.

(2) "Rate" includes any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric cooperative for any service, product, or commodity and any rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(3) "Stranded investment" means:

(A) the excess, if any, of the net book value of generation assets over the market value of the generation assets; and

(B) any above market purchased power costs.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.003. SECURITIZATION. (a) Electric cooperatives

may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through rates stranded costs at a recovery level deemed appropriate by the board of directors up to 100 percent, under rules and procedures that shall be established by the commission.

(b) The rules and procedures for securitization established under Subsection (a) shall include rules and procedures for the recovery of stranded costs under the terms of a rate order adopted by the board of directors of the electric cooperative, which rate order shall have the effect of a financing order.

(c) The rules and procedures established by the commission under Subsection (b) shall include rules and procedures for the issuance of transition bonds issued in a securitized financing transaction. The issuance of any transition bonds issued in a securitized financing transaction by an electric cooperative is expressly authorized and shall be governed by the laws governing the issuance of bonds or other obligations by the electric cooperative. Findings made by the board of directors of an electric cooperative in a rate order issued under the rules and procedures described by this subsection shall be conclusive, and any transition charges incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any securitized financing transaction shall constitute property rights, as described in Subchapter G, Chapter 39, and shall otherwise conform in all material respects to the transition charges provided by Subchapter G, Chapter 39.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.004. JURISDICTION OF COMMISSION. Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives only as follows:

(1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided in Subchapter A, Chapter 35;

(2) to regulate certification to the extent provided in Chapter 37;

(3) to establish a code of conduct as provided in

Section 39.157(e) subject to Section 41.054;

(4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives providing customer choice, as provided in Section 39.203;

(5) to require reports of electric cooperative operations only to the extent necessary to:

(A) ensure the public safety;

(B) enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter;

(C) enable the commission to determine the aggregate electric load and energy requirements in the state and the resources available to serve that load; or

(D) enable the commission to determine information relating to market power as provided in Section 39.155; and

(6) to evaluate and monitor the cybersecurity preparedness of an electric cooperative described by Section 39.1516(a)(3) or (4).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 610 (S.B. 936), Sec. 10, eff. September 1, 2019.

Sec. 41.005. LIMITATION ON MUNICIPAL AUTHORITY. Notwithstanding any other provision of this title, a municipality may not directly or indirectly regulate the rates, operations, and services of an electric cooperative, except, with respect to operations, to the extent necessary to protect the public health, safety, or welfare. This section does not prohibit a municipality from making a lawful charge for the use of public rights-of-way within the municipality as provided by Section 182.025, Tax Code, and Section 33.008. An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER B. ELECTRIC COOPERATIVE UTILITY CHOICE

Sec. 41.051. BOARD DECISION. (a) The board of directors has the discretion to decide when or if the electric cooperative will provide customer choice.

(b) Electric cooperatives that choose to participate in customer choice may do so at any time on or after January 1, 2002, by adoption of an appropriate resolution of the board of directors. The decision to participate in customer choice by the adoption of a resolution may be revoked only if no customer has opted for choice within four years of the resolution's adoption. An electric cooperative may initiate a customer choice pilot project at any time.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.052. ELECTRIC COOPERATIVES NOT OFFERING CUSTOMER CHOICE. (a) An electric cooperative that chooses not to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) An electric cooperative under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated retail service area and to purchase and sell electric energy at wholesale without geographic restriction.

(c) A generation and transmission electric cooperative may offer electric energy at unregulated prices directly to retail customers outside of its parent electric cooperatives' certificated service areas only if a majority of the parent electric cooperatives of the generation and transmission electric cooperative have chosen to offer customer choice.

(d) A subsidiary of an electric cooperative may not provide electric energy at unregulated prices outside of its parent electric cooperative's certificated retail service area unless the electric cooperative offers customer choice inside its certificated retail service area.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.053. RETAIL CUSTOMER RIGHT OF CHOICE. (a) If an electric cooperative chooses to participate in customer choice, after that choice, all retail customers within the certificated service area of the electric cooperative shall have the right of customer choice, and the electric cooperative shall provide nondiscriminatory open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the electric cooperative within that service area and may, at the option of the electric cooperative, continue to be offered by the electric cooperative as sole provider.

(c) On its initiation of customer choice, an electric cooperative shall designate itself or another entity as the provider of last resort for retail customers within the electric cooperative's certificated service area and shall fulfill the role of default provider of last resort in the event no other entity is available to act in that capacity.

(d) If a retail electric provider fails to serve a customer described in Subsection (c), on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the board of directors.

(e) The board of directors may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.054. SERVICE OUTSIDE CERTIFICATED AREA. (a) Notwithstanding any provisions of Chapter 161:

(1) an electric cooperative participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers who

have customer choice without regard to geographic location; and

(2) any person, without restriction, except as may be provided in the electric cooperative's articles of incorporation and bylaws, may be a member of an electric cooperative.

(b) In providing service under Subsection (a) to retail customers outside its certificated service area as that area exists on the date of adoption of customer choice, an electric cooperative becomes subject to commission jurisdiction as to the commission's rules establishing a code of conduct regulating anticompetitive practices under Section 39.157(e), except to the extent those rules conflict with this chapter.

(c) For electric cooperatives participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other electric providers to the electric cooperative's distribution facilities.

(d) Notwithstanding Subsections (b) and (c), the commission shall make accommodation in the code of conduct for specific legal requirements imposed by state or federal law applicable to electric cooperatives. The commission shall accommodate the organizational structures of electric cooperatives and may not prohibit an electric cooperative and any related entity from sharing officers, directors, or employees.

(e) The commission does not have jurisdiction to require the unbundling of services or functions of, or to regulate the recovery of stranded investment of, an electric cooperative or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of an electric cooperative within the electric cooperative's certificated service area.

(f) An electric cooperative shall maintain separate books and records of its operations and the operations of any subsidiary and shall ensure that the rates charged for provision of electric service do not include any costs of its subsidiary or any other costs not related to the provision of electric service.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of

directors has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the electric cooperative, except as provided by Sections 41.054 and 41.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

(2) determine whether to unbundle any energy-related activities and, if the board of directors chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the electric cooperative's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time;

(5) determine the extent to which the electric cooperative will provide various customer services, including nonelectric services, or accept the services from other providers;

(6) manage and operate the electric cooperative's utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

(8) determine whether a base rate reduction is appropriate for the electric cooperative;

(9) determine any other utility matters that the board of directors believes should be included;

(10) sell electric energy and capacity at wholesale, regardless of whether the electric cooperative participates in customer choice;

(11) determine the extent to which the electric cooperative offers energy efficiency programs and how the programs

are administered by the electric cooperative; and

(12) make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. [3693](#)), Sec. 28, eff. September 1, 2007.

Sec. 41.056. ANTICOMPETITIVE ACTIONS. (a) If, after notice and hearing, the commission finds that an electric cooperative providing customer choice has engaged in anticompetitive behavior by not providing other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the electric cooperative's certificated service area that are comparable to the electric cooperative's and its subsidiaries' terms and conditions of access to distribution facilities or customers, the commission shall notify the electric cooperative.

(b) The electric cooperative shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a). If the behavior is not fully remedied within that time, the commission may prohibit the electric cooperative or its subsidiary from providing retail service outside its certificated retail service area until the behavior is remedied.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.057. BILLING. (a) An electric cooperative that opts for customer choice may continue to bill directly electric customers located in its certificated service area for all transmission and distribution services. The electric cooperative may also bill directly for generation and customer services provided by the electric cooperative or its subsidiaries to those customers.

(b) A customer served by an electric cooperative for transmission and distribution services and by a retail electric provider for retail service has the option of being billed directly



by each service provider or receiving a single bill for distribution, transmission, and generation services from the electric cooperative.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.058. TARIFFS FOR OPEN ACCESS. An electric cooperative that owns or operates transmission and distribution facilities shall file tariffs implementing the open access rules established by the commission under Section 39.203 with the appropriate regulatory authorities having jurisdiction over the transmission and distribution service of the electric cooperative before the 90th day preceding the date the electric cooperative offers customer choice.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.059. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a board of directors to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.060. CUSTOMER SERVICE INFORMATION. (a) The commission shall keep information submitted by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives.

(b) The commission shall notify the appropriate electric cooperative of information submitted by a customer or retail electric provider, and the electric cooperative shall respond to the customer or retail electric provider. The electric cooperative shall notify the commission of its response.

(c) The commission shall prepare a report for the Sunset Advisory Commission that includes information submitted and responses by electric cooperatives in accordance with the Sunset Advisory Commission's schedule for reviewing the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.061. RETAIL RATE CHANGES BY ELECTRIC COOPERATIVES.

(a) This section shall apply to retail rates of an electric cooperative that has not adopted customer choice and to the retail delivery rates of an electric cooperative that has adopted customer choice. This section may not apply to rates for:

(1) sales of electric energy by an electric cooperative that has adopted customer choice; or

(2) wholesale sales of electric energy.

(b) An electric cooperative may change its rates by:

(1) adopting a resolution approving the proposed change;

(2) mailing notice of the proposed change to each affected customer whose rate would be increased by the proposed change at least 30 days before implementation of the proposed change, which notice may be included in a monthly billing; and

(3) holding a meeting to discuss the proposed rate changes with affected customers, if any change is expected to increase total system annual revenues by more than \$100,000 or one percent, whichever is greater.

(c) An electric cooperative may implement the proposed rates on completion of the requirements under Subsection (b), and those rates shall remain in effect until changed by the electric cooperative as provided by this section or, for rates other than retail delivery rates, until this section is no longer applicable because the electric cooperative adopts customer choice.

(d) The electric cooperative may reconsider a rate change at any time and adjust the rate by board resolution without additional notice or meeting of customers if the rate as adjusted is not expected to increase the revenues from a customer class. However, if notice is given to a customer class that would receive an increase as a result of the adjustment, then the rates for the customer class may be increased without additional meeting of the customers. A customer may petition to appeal within the time provided in Subsection (f).

(e) Retail rates set by an electric cooperative that has not adopted customer choice and retail delivery rates set by an electric cooperative that has adopted customer choice shall be just and reasonable, not unreasonably preferential, prejudicial, or

discriminatory; provided, however, if the customer agrees, an electric cooperative may charge a market-based rate to customers who have energy supply options if rates are not increased for other customers as a result.

(f) A customer of the electric cooperative who is adversely affected by a rate setting resolution of the electric cooperative is entitled to judicial review. A person initiates judicial review by filing a petition in the district court of Travis County not later than the 90th day after the resolution is implemented.

(g) The resolution of the electric cooperative setting rates, as it may have been amended as described in Subsection (d), shall be presumed valid, and the burden of showing that the resolution is invalid rests on the persons challenging the resolution. A court reviewing a change of a rate or rates by an electric cooperative may consider any relevant factor including the cost of providing service.

(h) If the court finds that the electric cooperative's resolution setting rates violates the standards contained in Subsection (e), or that the electric cooperative's rate violates Subsection (e), the court shall enter an order:

(1) stating the specific basis for its determination that the rates set in the electric cooperative's resolution violate Subsection (e); and

(2) directing the electric cooperative to:

(A) set, within 60 days, revised retail rates that do not violate the standards of Subsection (e); and

(B) refund or credit against future bills, at the electric cooperative's option, revenues collected under the rate found to violate the standards of Subsection (e) that exceed the revenues that would have been collected under the revised rates. The refund or credit shall be made over a period of not more than 12 months, as determined by the court.

(i) The court may not enter an order delaying or prohibiting implementation of a rate change or set revised rates either for the period the challenged resolution was in effect or prospectively.

(j) A person having obtained an order of the court requiring an electric cooperative to set revised retail rates pursuant to

Subsection (h)(2)(A) may, once the order is no longer subject to appeal, initiate an original proceeding in the district court of Travis County either to:

(1) seek enforcement of the court's order by writ of mandamus if the electric cooperative has failed to adopt a resolution approving revised rates within the time prescribed; or

(2) seek judicial review of the electric cooperative's most current resolution setting rates as provided in this section, if the electric cooperative has set revised rates pursuant to the order of the court within the time prescribed. In the event of such enforcement proceeding or judicial review the court may, in addition to the other remedies provided for in this section, award reasonable costs, including reasonable attorney's fees, to the party prevailing on the case as a whole. Additionally, if the court finds that either party has acted in bad faith solely for the purpose of perpetuating the rate dispute between the parties, the court may impose sanctions on the offending party in accordance with the provisions of Subsections (b), (c), and (e), Section [10.004](#), Civil Practice and Remedies Code.

(k) An electric cooperative that has not adopted customer choice and that has not changed each of its nonresidential rates since January 1, 1999, shall, on or before May 1, 2002, adopt a resolution setting rates. The resolution shall be subject to judicial review as provided in this section whether or not any rate is changed. In the event the electric cooperative fails to adopt a resolution setting rates pursuant to this subsection, a customer may petition for judicial review of the electric cooperative's rates. A person initiates judicial review by filing a petition in the district court of Travis County not later than November 1, 2002. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.062. ALLOCATION OF STRANDED INVESTMENT. Any competition transition charge shall be allocated among retail customer classes based on the relevant customer class characteristics as of the end of the electric cooperative's most recent fiscal year before implementation of customer choice, in accordance with the methodology used to allocate the costs of the

underlying assets or expenses in the electric cooperative's most recent cost of service study certified by a professional engineer or certified public accountant or approved by the commission. In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric cooperative, an electric utility, or a municipally owned utility. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

#### SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 41.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with an electric cooperative or its subsidiary.

(b) No provision of this subtitle may interfere with or be deemed to abrogate the rights or obligations of a party under a contract or an agreement concerning certificated service areas. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of an electric cooperative or its subsidiary, either on its own behalf or on behalf of its customers, to the wholesale electric market. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between an electric cooperative and its lenders and holders of bonds issued on behalf of or by the electric cooperative. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of electric cooperatives, nor shall anything in this subtitle compel any electric cooperative to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to

facilities financed by tax-exempt or federally insured or guaranteed debt.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.